

EXHIBIT G

Declaration of Robert M. Kerr, Director of the South Carolina
Department of Health and Human Services

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THE STATE OF SOUTH CAROLINA, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of the United States Department
of Health and Human Services, et al.,

Defendants.

Case No. 1:24-cv-161-LG-BWR

DECLARATION OF ROBERT M. KERR

Pursuant to 28 U.S.C. § 1746, I, Robert M. Kerr, duly affirm under penalty of perjury as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.
2. I serve as the Director of the South Carolina Department of Health and Human Services (“SCDHHS”). SCDHHS is responsible for administering South Carolina’s Medicaid program.
3. As Director, I am responsible for the management of SCDHHS and its programs. These responsibilities include ensuring compliance with state and federal anti-discrimination laws. That comprises overseeing the teams that review and evaluate rules and regulations promulgated by federal agencies, including the U.S. Department of Health and Human Services (“HHS”), to determine whether they necessitate policy changes. And where such changes are necessary—

either because SCDHHS does not have a policy required by the regulation or has a conflicting policy—I am ultimately responsible for executing a plan for bringing SCDHHS into compliance.

4. SCDHHS's mission is to improve the health and quality of life for South Carolinians through coverage of high-quality, cost-effective care. Accomplishing this mission requires partnership between the provider community, stakeholders, advocates, families, and SCDHHS employees. SCDHHS currently serves approximately 1.2 million South Carolinians, including low-income individuals, pregnant women, children, caretaker relatives of young children and older adults and adults with disabilities.

5. SCDHHS received approximately \$6.5 billion in total federal funding in State Fiscal Year 2022-2023. SCDHHS has received approximately \$7 billion in federal funding year to date in State Fiscal Year 2023-2024.

6. HHS funding is used to pay a portion of SCDHHS's administrative costs, including many SCDHHS employees' salaries and benefits.

7. SCDHHS's Medicaid program is prohibited from using public funds directly or indirectly for gender transition procedures. *See SC Code Section 44-42-310, et seq.*

8. It is not the policy of SCDHHS's Medicaid program to provide coverage for gender transition procedures. *See SCDHHS Hospital Services Provider Manual and SCDHHS Physicians Services Provider Manual.*

9. HHS has promulgated new regulations interpreting Section 1557 of the Affordable Care Act's prohibition on discrimination "on the basis of sex" to include "gender identity" and other "sex characteristics." *Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024) ("2024 Rule").

10. If the 2024 Rule requires state Medicaid programs to cover gender transition procedures, SCDHHS risks losing significant federal funding.

11. If South Carolina's Medicaid program were required to cover gender transition procedures, there would be an immediate increase in state and federal expenditures.



ROBERT M. KERR

Dated: June 13, 2024